

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

FRANK M. PECK,

Plaintiff,

vs.

STATE OF NEVADA, *et al.*,

Defendants.

Case No. 2:18-cv-00237-APG-VCF

ORDER

MOTION TO COMPEL (ECF NO. 231);
MOTION FOR AN EXTENSION (ECF NO. 233)

Pro se plaintiff Frank M. Peck filed motions to compel discovery and for an extension of time to file a reply. ECF Nos. 231 and 233. I deny the motion to compel and grant the motion for an extension of time. *Id.*

On March 21, 2023, I held a hearing on plaintiff's previous motion to compel, which I granted in part. ECF No. 230. At the hearing, I ordered the defendants to produce—if it existed—HDSP culinary pull sheet dated in the year of 2018; HDSP culinary videos for the morning of the 13th of every month of 2018; HDSP meal reports for 2018; video of HDSP unit 11 for the date of December 7, 2017; and logs of when emergency call buttons are pushed and answered. *Id.*

Attorney Taylor states that after the hearing she consulted with her client to identify and locate these documents. ECF No. 232. Attorney Taylor wrote a letter to plaintiff, which she signed as an officer of the court, stating that, "[a]fter a reasonable inquiry, the Nevada Department of Corrections is not in possession, custody, or control of these documents and tangible things." ECF No. 232-1. Plaintiff filed a motion to compel these documents. ECF No. 231. Defendants have stated they do not have these

1 documents. ECF No. 232. Plaintiff asked for more time to file a reply. ECF No. 233. Plaintiff argues in
2 his reply that the defendants are “probably hiding facts.” ECF No. 234.

3 I cannot compel the production of non-existent documents. Plaintiff argues that defendants are
4 probably hiding something. This argument is unsupported. Attorney Taylor, as an officer of the court,
5 states that the documents do not exist. Absent a showing by plaintiff that such documents do exist,
6 plaintiff’s renewed motion to compel is denied.

7 ACCORDINGLY,

8 I ORDER that plaintiff’s motion to compel discovery (ECF No. 231) is DENIED.

9 I FURTHER ORDER that plaintiff’s motion for an extension of time to file a reply (ECF No.
10 233) is GRANTED.

11 **NOTICE**

12 Pursuant to Local Rules IB 3-1 and IB 3-2, a party may object to orders and reports and
13 recommendations issued by the magistrate judge. Objections must be in writing and filed with the Clerk
14 of the Court within fourteen days. LR IB 3-1, 3-2. The Supreme Court has held that the courts of appeal
15 may determine that an appeal has been waived due to the failure to file objections within the specified
16 time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1) failure to file
17 objections within the specified time and (2) failure to properly address and brief the objectionable issues
18 waives the right to appeal the District Court’s order and/or appeal factual issues from the order of the
19 District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch.*
20 *Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

21 Pursuant to LR IA 3-1, the plaintiff must immediately file written notification with the court of
22 any change of address. The notification must include proof of service upon each opposing party’s
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1 attorney, or upon the opposing party if the party is unrepresented by counsel. Failure to comply with this
2 rule may result in dismissal of the action.

3 IT IS SO ORDERED.

4 DATED this 14th day of May 2023.



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6 CAM FERENBACH
7 UNITED STATES MAGISTRATE JUDGE
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